



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, DC 20240

MAR 5 2012

Re: 12, 14, and 16 East 62nd Street, New York, New York
Project Numbers: 24439, 24440, and 24441

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the properties cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank for speaking with me via conference call on January 31, 2012, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the materials submitted by following our conference call, I have determined that the rehabilitation of these properties is not consistent with the historic character of the property and the historic district in which they are located, and that the projects do not meet Standard 6 of the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued on December 5, 2011, by TPS is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

Built in 1879, the buildings at 12, 14, and 16 East 62nd St., are located in the Upper East Side Historic District. They were certified as contributing to the significance of the district on March 2, 2010 (#14) and March 3, 2010 (#12 and #16). The in-progress rehabilitation of these "certified historic structures" was found not to meet the Standards owing to the replacement of the existing windows.

TPS considered that the windows removed were historic and that evidence of deterioration sufficient to justify their replacement was lacking, and also that the new windows installed did not match the historic ones removed, but purported to match earlier windows for which evidence was also lacking. As a result, TPS found that the rehabilitation of the buildings did not meet Standards 2, 3, 5, and 6. Standard 2 states: *"The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."* Standard 3 states: *"Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken."* Standard 5 states: *"Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved."* Standard 6 states: *"Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence."*

As a general matter, I agree with TPS that the initial proposal failed to meet the Standards, and for the reasons articulated in its December 5, 2011, denial letter, specifically with regard to the second, third, and fourth floor windows on the 62nd Street façade of all three buildings. However, in the information submitted for my consideration prior to our conversation, and further clarified at that time, presented evidence that the existing windows were sufficiently deteriorated to justify their replacement. As a result, I have set aside the TPS objection to their replacement *per se*.

Following the conference call, in his letter dated February 5, 2012, _____ proposed to modify the replacement windows already installed in the rehabilitation on the second and third floors of all three buildings. Accordingly, my decision is based on a review of this modified application. These modifications, the configuration of which is shown in a marked-up photograph of all three properties accompanying the letter, will substantially match the visual appearance of the windows removed in the course of this rehabilitation, and will, with one exception noted below, bring this aspect of the project into conformance with the Standards cited above.

With regard to the second floor windows, _____ proposed to widen the horizontal muntins in the replacement windows of #12. Although this change is acceptable, I have determined that these muntins need not be revised as indicated because the horizontal muntins in the replacement windows acceptably match the muntins in the ones removed. In #14, the horizontal muntins will be removed so that the replacement windows will match the windows in the 1940s photographs and thus comply with Standard 6. In #16, full-height, double-leaf, divided-light casements will be installed, again matching the windows in the 1940s photographs and complying with Standard 6.

With regard to the third floor windows, _____ proposed to change the configuration of the replacement windows in #12 and #14 (double-leaf casements with a transom) to match the historic configuration visible in the 1940s photographs of the properties, that is, full-height, double-leaf casements without a transom. I have determined that this change to the third floor windows of #12 and #14 complies with Standard 6, cited above. However, no change was proposed for the third floor windows of #16, and I have determined that the current replacement windows (double-leaf casements with a transom) do not comply with Standard 6 because, 1) the 1940s photographs show double-hung windows in the third floor of #16, and 2) there is no evidence presented to show that any of the three buildings featured transoms over casements in the third floor openings. In this case, I have determined that there are two options that will comply with Standard 6. The first option is to match the historic configuration of double-hung windows visible in the 1940s photograph of #16 and extant at the beginning of the rehabilitation. The second option is to match the historic (and probably original) configuration of the third floor windows of #12, full-height, double-leaf casements without a transom. Either option will comply with Standard 6.

With regard to the fourth floor replacement windows, I accept _____'s assertion that physical evidence that remained in the window frames of #12 and #14 matched the window frames of the remaining original windows of #16. Consequently, I have determined that the replacement fourth floor windows in all three buildings, which match the historic (and probably original) windows found in #16, comply with Standard 6, cited above. Thus, no changes are necessary.

Please note that these three projects will not become eligible for the tax incentives until the remedial measures specified above are completed, and until all other work on the buildings is completed and the projects are designated "certified rehabilitations." Should you have any questions concerning procedures for final certification, please contact Mr. Michael Auer at 202-354-2031.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the December 5, 2011, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns", with a long, sweeping horizontal line extending to the right.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc:

SHPO-NY

IRS